



FAIR POLITICAL PRACTICES COMMISSION

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March 9, 2010

Ashlee N. Titus, Assistant Treasurer
Bell, McAndrews & Hiltachk, LLP

REDACTED

RE: In the Matter of Yes on C, Sponsored by Shadowrock Palm Springs LLC and Thomas W. Hiltachk, Treasurer - FPPC No. 07/684

Dear Ms. Titus:

The Fair Political Practices Commission (the "FPPC") enforces provisions of the Political Reform Act (the "Act").¹ The Enforcement Division of the FPPC received a complaint alleging that on or about October 12, 2007, a "movie poster" campaign advertisement supporting Measure C was distributed in the City of Palm Springs without disclosing who paid for the advertisement.

The Enforcement Division has completed its investigation of the facts in this case. Specifically, the FPPC found that the responsible persons for the advertisement were Yes on C, Sponsored by Shadowrock Palm Springs LLC (the "Committee") (ID 1300821) and its treasurer, Thomas W. Hiltachk. The sponsored Committee was a ballot measure committee primarily formed to support the passage of Measure C in the City of Palm Springs in the November 6, 2007, election. The investigation further revealed that on or about October 12, 2007, approximately 23,000 "movie posters" paid for by the Committee were inserted in the *Bottom Line* Magazine and were distributed. Among other things, the text stated, "Stan Castleton and Dorm Developers Proudly Present Shadowrock a Yes On C Production in association with the People of Palm Springs." The cost of producing and distributing the movie poster was approximately \$23,804.

In a letter to the Committee dated October 16, 2007, the printer, Dynamic Marketing, Inc., stated that the disclaimer intended to appear in the movie poster was inadvertently omitted by the printer. The disclaimer would have printed in 10-point type and stated, "Yes on C, Sponsored by Shadowrock Palm Springs LLC."

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Duty to Disclose Major Donors of \$50,000 or More in an Advertisement

Section 84503 requires disclosure statements regarding the major donors who pay for campaign advertisements, as defined in Section 84501. These advertisements include, among other things, communications placed in magazines of general circulation.

Section 84503, subdivision (a), specifically requires that advertisements for or against any ballot measure include a disclosure statement identifying any person whose cumulative contributions are fifty thousand dollars (\$50,000) or more. Regulation 18450.4, subdivision (a), explains that the disclosure shall explicitly indicate that the contributor was a major donor to the committee and shall be printed in type no less than 10 points in size and printed in a contrasting color to the background on which it appears. (Regulation 18450.4, subdivision (e)(3).)

Pursuant to Section 84503 and Regulation 18450.4, you had a duty to disclose the highest donor who gave \$50,000 or more to the Committee. Thus, the movie poster inserted in the magazine should have included a disclosure statement in the advertisement naming the sponsor as providing major funding.

Duty to Amend the Name of the Committee and to Identify the Economic or Other Special Interest of the Committee's Major Donor in the Advertisement

In addition to the requirements of Section 84503, under Section 84504, the name of a committee primarily formed to support or oppose a ballot measure shall clearly identify the economic or other special interest of the committee's major donors of \$50,000 or more in any reference to the committee required by law, including, but not limited to its statement of organization filed pursuant to Section 84101. (Section 84504, subdivision (a), Regulation 18402, subsection (c)(4)(E).)

Such committee, shall, in addition, print or broadcast its name as provided in Section 84504 as part of any advertisement or other paid public statement. (Section 84504, subdivision (c); Regulation 18450.3, subdivision (b)(1).) For purposes of implementing the name identification requirements of Section 84504, a disclosable contributor's "economic or other special interest" shall identify any ascertainable economic interest that exists that is likely to be affected by the ballot measure.

Finally, print media advertisements and tangible items must be amended to reflect accurate disclosure information when a committee's name changes pursuant to Section 84504 and Regulation 18402 or Regulation 18450.3. (Regulation 18450.5.)

Pursuant to Section 84504, you had a duty to amend the Committee name to reflect that the economic or other special interest of Shawdownrock was land development and to identify that interest in the advertisement disclosure statement required by Section 84503.

The Enforcement Division has concluded that you violated the advertisement disclosure provisions of the Act as set forth in Sections 84503 and 84504. However, we have determined to close this case with a formal warning letter based on the following: 1) for purposes of the disclaimer required by Section 84503, the printer accepted responsibility for inadvertently omitting the disclaimer; 2) the public harm due to the omission of the disclosure statement and amendment to the name of the committee was minimized by the movie poster's featuring of Shadowrock as a developer; 3) the Committee terminated December 13, 2007, following the defeat of the measure; and 4) the Committee cooperated with the investigation.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the advertisement provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation or three times the cost of the advertisement for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

If you have any questions, please feel free to contact me at 916-322-5660.

Sincerely,

REDACTED

Luisa Menchaca
Senior Commission Counsel
Enforcement Division